

UPDATED INFORMATIVE DIGEST

In June 2006, the CDSS was informed that the State was not in compliance with Aid to Families with Dependent Children-Foster Care (AFDC-FC) overpayment recoupment that requires the federal share of overpayments identified through state program audits, county compliance audits, and county overpayment errors be returned immediately once the overpayment has been identified. The past practice at CDSS, based on a federal financial management cost principal of Office of Management and Budget (OMB) Circular A-87, had been to repay the federal share of overpayments upon recoupment from foster care providers. However, the Department of Health and Human Services (DHHS) Region IX advised CDSS that it was out of compliance with the federal Improper Payments Information Act (IPIA) and that it had misinterpreted the federal law. Moreover, DHHS Region IX advised CDSS that it is responsible for crediting the federal government the full amount of the federal share of Title IV-E funds upon identification following the completion of due process, regardless of whether the state or county collects or has the ability to collect overpayments. Therefore, CDSS informed the DHHS Region IX that it would take immediate steps to comply with identifying, tracking, and reporting overpayments and remitting the federal share as required.

In October 2006, CDSS began a series of workgroup meetings with the County Welfare Director's Association (CWDA) and county representatives to address statewide concerns with identifying, tracking, and reporting overpayments, and identify current and potential best practices to prevent and reduce overpayments. Additionally, current state statutes and regulations that prohibit collection of overpayments, information system problems for identifying overpayments, and a need for clarification of policy and oversight for overpayments were identified as issues. Counties were advised to begin tracking identified overpayments regardless of the ability to collect.

Based on the county overpayment lists submitted for specified retroactive periods, CDSS has identified and repaid to date approximately \$12.3 million dollars as the federal share of identified overpayments from county errors, county compliance audits, and state program audits. The DHHS Region IX demanded repayment of any outstanding federal share of overpayments; otherwise, it would begin the formal disallowance process for the federal share of Title IV-E funds prospectively.

In response, CDSS made necessary modifications to the county claim form to allow counties to make adjustments for county overpayments beginning with the March 2008 claim month.

Senate Bill (SB) 84 (Chapter 177, Statutes of 2007) contains legislative language that statutorily requires CDSS to collaborate with CWDA to develop and implement processes, procedures, and develop regulations that will ameliorate systemic problems with identifying, tracking, reporting, collecting, and remitting the federal share of Title IV-E foster care and AAP overpayments. The workgroup identified current issues with state statute and regulations that preclude counties from notifying and recovering overpayments; identified possible best practices to reduce or eliminate overpayments; identified issues with due process and appeal rights of providers; identified problems associated with Adoption Assistance Program (AAP) payments, that may occur only every two years when AAP agreements are renegotiated and may affect the timely discovery of an overpayment; defined "uncollectible debt;" and identified the appropriate roles of both counties and the state in recouping overpayments including those identified through state program audits.

Pursuant to SB 84, CDSS is required to repay the federal share of all overpayments identified by counties until such time as CDSS promulgates regulations, or by December 31, 2008, thus, relieving counties of the responsibility to pay back overpayments.

These regulations were considered as Item #1 at the public hearing held on August 12, 2009 in Sacramento, California. Written testimony was received during the 45-day comment period from June 26, 2009 to 5:00 p.m. August 12, 2009. As a result of the testimony received, these regulations were further modified. Those modifications include:

- Clarify that the county must provide adequate written notification to a provider of any requirements the county may have in order to make a payment to the provider.
- Clarify that the county will notify the provider of a deadline for submission of any information requested by the county in the written notification; and, failure of the provider to timely submit the information identified in the written notification may result in a delayed payment to the provider.
- Clarify that a county develop a written program of internal controls to ensure an adequate system of discovering overpayments exists in a written procedure to ensure consistency.
- Require that the county, when documenting overpayments, include the reasons for the payment error, rather than just a description of the circumstances that resulted in the payment error for clarity and consistency.
- Allow counties to request the provider to voluntarily send in funds they were overpaid, but also informs the provider that if they don't return these funds there will be no adverse action taken against the provider or any child living in the home.
- Clarify that the counties shall not initiate a financial or fiscal audit or any activity that could lead to an overpayment by a group home or foster family agency that is no longer in business, without written approval of the department, unless a fiscal or financial audit is instituted by law enforcement agencies as defined in the Penal Code.
- Instruct counties how to accurately calculate interest for overpayments (in accordance with Welfare and Institutions Code Section 11466.22(d)(4)).
- Clarify that counties determine an overpayment through application of regulatory procedures to ensure a consistent process statewide as a protection to providers, the county and the state.
- Other modifications made for clarity and consistency.

Pursuant to Government Code Section 11346.8, a 15-day renote and complete text of modifications made to the regulations were made available to the public following the public hearing. Written testimony on the modifications renoted for public comment from February 25 through March 12, 2010 was received; however, no further modifications were made to the regulations.